

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM, et al.,

Defendants.

C21-0811 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motions in limine, docket no. 204, are GRANTED in part, DENIED in part, and DEFERRED in part as follows:

1.1 Plaintiff's motion to instruct the jury that the Arbitration Award's finding that Plaintiff owns copyrights in *Destiny 2* and *Destiny 2: Beyond Light*, is true is GRANTED in part and DENIED in part. The parties have stipulated that Plaintiff owns copyrights in *Destiny 2* and *Destiny 2: Beyond Light*. See Admitted Fact 3, Proposed Pretrial Ord. at 5 (docket no. 227). The Court will not instruct the jury that this finding was made by the Arbitrator.

1.2 Plaintiff's motion to instruct the jury that the Arbitration Award's finding that Defendant May developed the Cheat Software sold on AimJunkies.com while working with and for the benefit of the other Defendants, is true is DENIED. The Arbitrator did not make this precise finding.

1.3 Plaintiff's motion to instruct the jury that the Arbitration Award's finding that to operate, the Cheat Software necessarily creates (a) unauthorized copies of the *Destiny 2* and *Destiny 2: Beyond Light* code and (b) unauthorized

1 derivative works of *Destiny 2* and *Destiny 2: Beyond Light*, is true is DENIED.
2 Any such finding was not necessary to the Arbitrator's Final Award.

3 1.4 Plaintiff's motion to instruct the jury that the Arbitration Award's
4 finding that the Cheat Software was designed to circumvent the protections in
5 place in *Destiny 2* and *Destiny 2: Beyond Light* and that the Cheat Software loader
6 was designed to circumvent protections by injecting code into the *Destiny 2* and
7 *Destiny 2: Beyond Light* programs without detection in violation of 17 U.S.C.
8 § 1201(b), is true is DEFERRED to the Pretrial Conference.

9 1.5 Plaintiff's motion to instruct the jury that the Arbitration Award's
10 finding that Defendants willfully violated the Digital Millennium Copyright Act,
11 17 U.S.C. § 1201, through their development and sale of the Cheat Software, is
12 true is DENIED. The issue of willfulness is not relevant to the issues remaining
13 for trial.

14 1.6 Plaintiff's motion to instruct the jury that the Arbitration Award's
15 finding that Defendants sold at least 1,316 copies of the Cheat Software, is true is
16 GRANTED in part and DENIED in part. Defendants concede that they sold no
17 more than about 1,500 copies of the Cheat Software. *See* Defs.' Resp. at 9–10
18 (docket no. 231). The Court will not instruct the jury that this finding was made
19 by the Arbitrator. The Court will address at the Pretrial Conference whether the
20 parties can agree on the number of copies sold by Defendants.

21 1.7 Plaintiff's motion to instruct the jury that the Arbitration Award's
22 finding that Defendant May, acting in concert with and for the benefit of
23 Defendants, breached Plaintiff's Limited Software License Agreement multiple
times by reverse engineering *Destiny 2* and *Destiny 2: Beyond Light*, which the
Limited Software License Agreement expressly prohibits, is true is DENIED.
This finding is not relevant to Plaintiff's sole remaining claim for copyright
infringement.

1.8 Plaintiff's motion to instruct the jury that Defendants spoliated
evidence is GRANTED in part. The Court will instruct the jury consistent with
this Court's Order, docket no. 216; the Court will not advise the jury about any of
Judge Cox's findings.

2.1 Plaintiff's motion to preclude Defendants from calling Plaintiff's
General Counsel, Don McGowan, as a witness is GRANTED.

2.2 Plaintiff's motion to preclude Defendants from introducing evidence
or testimony regarding Plaintiff's alleged breaches of Phoenix Digital Group
LLC's Terms of Service is GRANTED.

1 2.3 Plaintiff's motion to preclude Defendants from introducing any
2 evidence or testimony related to Defendants' withdrawn expert Scott Kraemer is
DEFERRED to the Pretrial Conference.

3 2.4 Plaintiff's motion to preclude Defendants from introducing
4 testimony regarding how the Cheat Software or Cheat Loader Software operate on
a programming level is DENIED.

5 9. Plaintiff's motion to preclude any identifying information as to the
6 witness designated in these proceedings as John Doe is DEFERRED to the Pretrial
Conference.

7 (2) Defendants' motions in limine, docket no. 212, are GRANTED in part,
DENIED in part, and DEFERRED in part as follows:

8 1. Defendants' motion to preclude testimony or evidence referencing
9 the Arbitration Proceedings and Arbitration Award is GRANTED.

10 2. Defendants' motion to preclude testimony or evidence referencing
pre-trial discovery matters, including motions for sanctions and sanctions awards,
11 is GRANTED in part to any sanctions award except as provided in this Court's
Order, docket no. 216, related to spoliation.

12 3. Defendants' motion to preclude reference to the word "Cheat" or
phrase "Cheat Software" is DENIED.

13 4. Defendants' motion to preclude the expert testimony of Dr. Edward
14 Kaiser, Mr. Steven Guris, and Mr. Drew Voth that exceeds the scope of their
expert reports or deposition testimony is GRANTED.

15 5. Defendants' motion to preclude the expert testimony of late
16 disclosed expert Mr. Nate Buckmiller is GRANTED in part and DEFERRED in
part to the Pretrial Conference. Mr. Buckmiller will not be allowed to testify as an
17 expert witness. The Court DEFERS to the Pretrial Conference a determination on
whether and to what extent, if any, Mr. Buckmiller will be allowed to testify as a
18 fact witness.

19 6. Defendants' motion to preclude testimony or evidence referencing
Plaintiff's litigation against other non-parties is GRANTED.

20 7. Defendants' motion to exclude reference to, or admission of,
21 Plaintiff's source code not produced in discovery is DEFERRED to the Pretrial
Conference. It is not clear what source code Defendants are alleging was not
22 produced in discovery.

s/Laurie Cuaresma
Deputy Clerk